

## Chapter LXIV.

### FUNCTION OF THE HOUSE IN IMPEACHMENT.

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1. Provision of the Constitution. Section 2025.<sup>1</sup>
  2. English precedents as to function of the Commons. Sections 2026–2027.<sup>2</sup>
  3. Attendance at trial. Section 2028.<sup>3</sup>
  4. Continuation of proceedings from Congress to Congress. Section 2029.
  5. Charges preferred by petition. Section 2030.
  6. The managers. Sections 2031–2037.<sup>4</sup>
  7. Early forms of subpoenas, etc. Sections 2038–2040.
  8. Form of signing testimony by witnesses. Section 2041.
  9. Consideration of matters relating to trial. Sections 2042–2044.
  10. High privilege of questions relating to impeachment. Sections 2045–2054.
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**2025. The sole power of impeachment is conferred on the House of Representatives by the Constitution.**—The Constitution, in Article I, section 2, provides:

The House of Representatives \* \* \* shall have the sole power of impeachment.

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<sup>1</sup> Nature of inquiry preliminary to impeachment. Section 2366 of this volume.

<sup>2</sup> Parliamentary law forbids Lords to join in. Section 2056.

<sup>3</sup> House did not attend in Blount's case (sec. 2318) and in the Peck trial only in the preliminary proceedings (sec. 2373). Attended in Committee of Whole in Chase trial (sec. 2350, 2354) and also in Johnson trial (sec. 2420, 2427, 2435). Also see section 2392 for Humphreys's trial, sections 2449, 2467 for Belknap's, and section 2483 for Swayne's.

<sup>4</sup> See also other sections relating to the managers:

Choice on appointment of. Sections 2300, 2306, 2323, 2345, 2350, 2368, 2388, 2417, 2448, 2475.

Held not to be a committee. Section 2420.

Sometimes endowed with power to compel testimony and even make investigations. Sections 1685, 2419, 2423.

Conduct and privileges of, during a trial. Sections 2144–2154.

Announced on entering Senate Chamber to attend trial. Section 2427.

Required to rise and address the Chair before speaking. Section 2146.

As to making of motions by. Sections 2136, 2144, 2147, 2189.

Rule as to questions and colloquies. Section 2154.

May object to witnesses answering questions asked by Senators. Sections 2182–2186.

May argue on questions put on propositions offered by Senators. Sections 2148, 2188.

May not move to amend a proposition offered by a Senator. Section 2147.

The claim that they should have the closing of all arguments. Section 2136.

They protest against delays during the trial of the President. Section 2150.

Are admonished not to delay. Section 2151.

Decline in the Pickering case to discuss a matter from a third party. Section 2334.

As to reports in relation to trial. Sections 2338, 2423, 2468.

**2026. Under the parliamentary law of impeachment the Commons, as grand inquest of the nation and as accusers, become suitors for penal justice at the bar of the Lords.**

**The Commons, in impeaching, usually pass a resolution containing a criminal charge against the accused and direct a Member to impeach him by oral accusation before the Lords.**

**The person impeaching on behalf of the Commons signifies that articles will be exhibited.**

**In impeaching, the spokesman of the Commons asks that the delinquent be sequestered from his seat, or committed, or that the Peers take order for his appearance.**

In Chapter LIII of Jefferson's Manual the following is given in the "sketch of some of the principles and practices of England" on the subject of impeachment:

Accusation. The Commons, as the grand inquest of the nation, become suitors for penal justice. (2 Wood., 597; 6 Grey, 356.) The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him by oral accusation at the bar of the House of Lords, in the name of the Commons. The person signifies that the articles will be exhibited, and desires that the delinquent may be sequestered from his seat, or be committed, or that the Peers will take order for his appearance. (Sachev. Trial, 325; 2 Wood., 602, 605; Lords' Journ., 3 June, 1701; 1 Wms., 616; 6 Grey, 324.)

**2027. The Commons attend generally in impeachment trials, but not when the Lords consider the answer on proofs or determine judgment.**

**The Commons attend impeachment trials in committee of the whole, or otherwise, at discretion, and appoint managers to conduct proof.**

**The presence of the Commons is considered necessary at the answer and the judgment in impeachment cases.**

**Method of taking the vote in judgment in English impeachment trials.**

In Chapter LIII of Jefferson's Manual, the following is given in the "sketch of some of the principles and practices of England" on the subject of impeachments:

Presence of Commons. The Commons are to be present at the examination of witnesses. (Seld. Jud., 124.) Indeed, they are to attend throughout, either as a committee of the whole House, or otherwise, at discretion, appoint managers to conduct the proofs. (Rushw. Tr. of Straff., 37; Com. Journ., 4 Feb., 1709-10; 2 Wood., 614.) And judgment is not to be given till they demand it. (Seld. Jud., 124.) But they are not to be present on impeachment when the Lords consider of the answer or proofs and determine of their judgment. Their presence, however, is necessary at the answer and judgment in cases capital (id., 58, 158) as well as not capital. (Id., 162.) The Lords debate the judgment among themselves. Then the vote is first taken on the question of guilty or not guilty; and if they convict, the question or particular sentence is out of that which seemeth to be most generally agreed on. (Seld. Jud., 167; 2 Wood., 612.)

**2028. In 1830, during the impeachment trial of Judge Peck, the House reconsidered its decision to attend the trial daily.**

**Instance of the reconsideration of an order which had been partly executed.**

On December 23, 1830,<sup>1</sup> this resolution was agreed to by the House:

*Resolved*, That, during the trial of the impeachment now pending before the Senate, this House will meet daily at the hour of 11 o'clock in the forenoon, and that from day to day it will resolve itself into a Committee of the Whole and attend said trial during the continuance thereof and until the conclusion of the same.

On the same day the House attended the trial in accordance with the order, and continued to do so as long as it remained in effect.

On December 24<sup>2</sup> Mr. Kensey Johns, Jr., of Delaware, moved to reconsider the vote whereby the resolution was agreed to, and the consideration of this motion was postponed to December 27.

On December 27,<sup>3</sup> after consideration, the motion to reconsider was laid on the table.

On January 3, 1831,<sup>4</sup> Mr. Johns moved that the House proceed to the consideration of the motion to reconsider,<sup>5</sup> and Mr. Johns's motion was agreed to, yeas 117, nays 58.

A motion to lay the motion to reconsider on the table was disagreed to, yeas 55, nays 111.

And the question being put, "Will the House reconsider the same vote?" it was decided in the affirmative.

The question recurring on agreeing to the original resolution of December 23, after debate, on January 4<sup>6</sup> the question was put "that the House do, on reconsideration, agree to pass the same," and it was decided in the negative, yeas 69, nays 118.

The House up to this time had daily attended the impeachment trial. Thereafter it ceased to do so until a new order was adopted.

**2029. The House sometimes continues an investigation begun in a preceding Congress with view to an impeachment, making use of the former report and the testimony already taken.**

**The House may empower a subcommittee to send for persons and papers and conduct an investigation.**

On January 30, 1892<sup>7</sup> Mr. William C. Oates, of Alabama, from the Committee on the Judiciary, reported the following preamble and resolution, which were agreed to:

Whereas, Aleck Boorman, judge of the United States district court for the western district of the State of Louisiana, was charged in the House of Representatives of the Fifty-first Congress with high crimes and misdemeanors alleged to have been committed by him as a judge; and

Whereas, the Committee on the Judiciary, under the authority of said House, investigated the alleged official misconduct in office of the said judge and took a considerable volume of testimony thereon

<sup>1</sup>Second session Twenty-first Congress, Journal, pp. 97, 99.

<sup>2</sup>Journal, p. 101.

<sup>3</sup>Journal, p. 105.

<sup>4</sup>Journal, pp. 131-133.

<sup>5</sup>Under the present practice of the House a motion to lay on the table a motion to reconsider disposes of it finally. But in 1831 that practice was not established. About 1842 it was recognized that the tabling of a motion to reconsider was a final disposition of it.

<sup>6</sup>Journal, pp. 139, 140.

<sup>7</sup>First session Fifty-second Congress, Journal, p. 49; Record, p. 689.

both against said judge and for him, he being present in person or by his counsel whenever and wherever the said testimony was taken; and

Whereas, upon due consideration thereof the said committee reported a resolution to the said House of Representatives declaring that Judge Boorman should be impeached of high crimes and misdemeanors in office, and accompanying the said resolution was the evidence upon which the same was based, which was duly printed under the direction of said committee and by order of the House; and

Whereas, the said resolution never came to a vote, and hence never was adopted by said House for the lack of time to duly consider the same; Therefore,

*Be it resolved*, That the said report, charges, and evidence be referred to the Committee on the Judiciary, with instructions to thoroughly investigate the same and to report to the House the findings and recommendations in regard thereto at any time.

And for the purpose of making the investigation hereby ordered the said Committee on the Judiciary may adopt and use as legal evidence the testimony taken as aforesaid during the Fifty-first, Congress in the case of Judge Boorman, and may take and consider any additional and explanatory evidence of a legal character which may be offered either for or against the said judge; and in respect to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary; to send a subcommittee whenever and wherever deemed necessary to take testimony for the use of said committee, and the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary; that the Sergeant-at-Arms by himself or deputy shall serve the process of said committee and subcommittee and execute its orders and shall attend the sittings of the same as ordered and directed thereby, and the expenses of said investigation shall be paid out of the contingent fund of the House.

On June 1<sup>1</sup> the committee reported in favor of the impeachment of Judge Boorman.

**2030. Instance wherein the Speaker presented a petition in which were preferred charges against a Federal judge.**

**A petitioner who preferred charges against a Federal judge, furnished the certificate of a notary to his signature. (Footnote.)**

On June 25, 1906,<sup>2</sup> the Speaker under the rule presented a petition, as follows, which was referred to the Committee on the Judiciary:

Petition of Francis C. Mahon, of New Orleans, La., preferring charges against Charles Parlance, district judge of the eastern district of the United States court of Louisiana.<sup>3</sup>

**2031. When managers of an impeachment are elected by ballot, a majority is required for the choice of each.**—On December 5, 1804,<sup>4</sup> the House having decided that seven managers should be appointed by ballot to conduct the impeachment of Judge Samuel Chase, the ballot was taken, and the following Members appeared to be duly elected by a majority of the votes of the whole House, as six of the said managers, to wit: Mr. John Randolph, Mr. Rodney, Mr. Nicholson, Mr. Early, Mr. Boyle, and Mr. Nelson.

The House proceeded to a second ballot for another manager, when the ballots being examined it appeared that no Member had a majority of the votes of the

<sup>1</sup> Journal, p. 207; Record, p. 4908.

<sup>2</sup> First session Fifty-ninth Congress, Record, p. 9244.

<sup>3</sup> This petition was signed by the petitioner, and as the signature was not certified in any way it was returned with the statement that it should be certified. It was then returned with the certificate and seal of a notary, and thereupon was presented by the Speaker.

<sup>4</sup> Second session Eighth Congress, Journal, pp. 101, 102 (old edition), 44 (Gales and Seaton) Annals, pp. 762, 763.

whole House, but that the highest number of votes was given in favor of Mr. George Washington Campbell.

The Speaker<sup>1</sup> decided that it being provided by a standing rule and order of the House that in case of any second ballot of the House in which the number required to compose a committee should not be elected by a majority of the votes given on the second ballot, a plurality of votes shall prevail, and therefore that in his opinion the said George Washington Campbell was duly elected the seventh manager.

On an appeal this decision was reversed, and a further ballot being taken Mr. Campbell received a majority of votes and was elected.

The Annals show that the Speaker based his decision on the supposition that the rules of the House for choice of committees by ballot was applicable to the choice of managers.

But debate arising the consensus of opinion was that on former occasions a majority of votes had been given for each manager, although in the case of Judge Pickering this appeared rather from the recollection of gentlemen than from the Journals. The Speaker invited the appeal, which was taken by Mr. John Randolph, of Virginia, with expressions of respect.

**2032. A Member appointed one of the managers of an impeachment may be excused by the House.**—On January 25, 1805,<sup>2</sup> the House excused Mr. Roger Nelson, of Maryland, from serving as one of the managers appointed to conduct the impeachment against Judge Samuel Chase.

**2033. The House gives leave to its managers to examine Members as witnesses in an impeachment trial, and leave to its Members to attend for that purpose.**—On April 28, 1876,<sup>3</sup> Mr. Scott Lord, of New York, offered this resolution, which was agreed to:

*Resolved*, That the managers have leave to examine any member of the Committee on Expenditures in the War Department and any Member of the House whom they deem necessary as a witness on the trial of the articles of impeachment against William W. Belknap, and that leave is hereby given to Members to attend the trial for that purpose if they see fit to do so.

**2034. A resolution empowering managers of an impeachment to take the testimony of Members was presented as a question of privilege.**—On April 28, 1876,<sup>4</sup> Mr. Scott Lord, of New York, presented as a question of privilege, and as required by the rule of parliamentary law, the following resolution, which was agreed to without debate:

*Resolved*, That the managers have leave to examine any member of the Committee on Expenditures in the War Department and any Member of the House whom they deem necessary as a witness on the trial of the articles of impeachment against William W. Belknap, and that leave is hereby given to Members to attend the trial for that purpose if they see fit to do so.

**2035. The inability of a manager to attend a session of an impeachment trial is announced by his associates.**

No question was made on an occasion during the Swayne trial when less than a quorum of the managers were in attendance.

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<sup>1</sup> Nathaniel Macon, of North Carolina, Speaker.

<sup>2</sup> Second session Eighth Congress, Journal, p. 105 (Gales and Seaton, ed.).

<sup>3</sup> First session Forty-fourth Congress, Journal, p. 880.

<sup>4</sup> First session Forty-fourth Congress, Record, p. 2818.

On February 17, 1905,<sup>1</sup> in the Senate Sitting for the impeachment trial of Judge Charles Swayne, the managers attended, with the exception of Mr. Manager David H. Smith, of Kentucky.

Before proceedings began, Mr. Manager Henry D. Clayton, of Alabama, announced:

Mr. President, Mr. Manager Smith, of Kentucky, has requested me to say to the court that he is unable to attend today's session on account of sickness.

**2036. On February 20, 1905,<sup>2</sup> the Senate, sitting for the impeachment trial of Judge Charles Swayne, Mr. Manager Marlin E. Olmsted, of Pennsylvania, said:**

Mr. President, I desire to announce the unavoidable absence today of Managers Palmer, Powers, of Massachusetts; Perkins and Smith, of Kentucky. We shall proceed as best we may in their absence.

No question was made as to the fact that only three of the seven managers—less than a quorum—were in attendance.

**2037. The House thanked its managers for their services in the Swayne impeachment trial.**—On March 3, 1905<sup>3</sup> Mr. Swager Sherley, of Kentucky, by unanimous consent, offered this resolution, which was agreed to by the House:

*Resolved*, That the thanks of the House be, and are hereby, extended to the managers on behalf of the House in the impeachment proceedings of Judge Charles Swayne before the Senate of the United States, to wit, Henry W. Palmer, Samuel L. Powers, Marlin E. Olmsted, James B. Perkins, David A. De Armond, Henry D. Clayton, and David H. Smith, for the able and efficient manner in which they discharged the onerous and responsible duties imposed upon them.

**2038. Forms of subpoena and compulsory process issued by House committee to produce persons and papers for Blount impeachment.**—In the proceedings for the impeachment of William Blount in 1797–8, the managers of the House of Representatives issued a subpoena in the following form:<sup>4</sup>

*To John Rogers, resident in the Cherokee Nation:*

Whereas the House of Representatives of the United States did, on the 8th day of July, in the year of our Lord one thousand seven hundred and ninety-seven, resolve as follows, to wit:

*“Resolved*, That a committee be appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House, of high crimes and misdemeanors, and that the said committee have power to send for persons, papers, and records.

*“Ordered*, That Mr. Sitgreaves, Mr. Baldwin, Mr. Dana, Mr. Dawson, and Mr. Harper be a committee, pursuant to the said resolution.”

And whereas the House of Representatives of the United States did, on the 10th day of July, in the year aforesaid, further resolve and order, as follows, to wit:

*“Resolved*, That the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House, of high crimes and misdemeanors, be authorized to sit during the recess of Congress.

*“Ordered*, That Mr. Dana be excused from serving on the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, and that Mr. Bayard be of the said committee in his stead.”

You are hereby required, in pursuance of the powers vested in us, the said committee, by the resolutions and orders aforesaid, that, laying aside all manner of business and excuses whatsoever, you be and appear forthwith, in your proper person, before us, the said committee, at the statehouse, in

<sup>1</sup> Third session Fifty-eighth Congress, Record, p. 2776.

<sup>2</sup> Third session Fifty-eighth Congress, Record, p. 2899.

<sup>3</sup> Third session Fifty-eighth Congress, Record, p. 3988.

<sup>4</sup> Fifth Congress, Annals, p. 2330.

the city of Philadelphia, to be examined touching the premises, and to testify your knowledge therein: And that you bring with you all such papers and documents touching the same as may be in your hands and possession; and herein fail not, at your peril.

Given under our hands and seals at the city of Philadelphia, in committee aforesaid, the 10th day of July, in the year aforesaid.

S. SITGREAVES.  
 ABR. BALDWIN.  
 J. DAWSON.  
 ROB. G. HARPER.  
 J. A. BAYARD.

**2039.** In the proceedings for the impeachment of William Blount, in 1797–8, the managers for the House of Representatives issued orders of arrest in form as follows:<sup>1</sup>

UNITED STATES, to Wit:

*To Capt. William Eaton.*

Whereas the House of Representatives of the United States did, on the eighth day of July, in the year one thousand seven hundred and ninety-seven, come to the following resolution, viz:

“*Resolved*, That a committee be appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House of high crimes and misdemeanors; and that the said committee have power to send for persons, papers, and records.”

“*Ordered*, That Mr. Sitgreaves, Mr. Baldwin, Mr. Darla, Mr. Dawson, and Mr. Harper be a committee pursuant to the said resolution.”

You are hereby authorized and required, in pursuance of the said authority vested in us as aforesaid, taking to your assistance such person or persons as you may deem necessary, to make strict and diligent search for Nicholas Romaine, now or late of the State of New York, practitioner of medicine; and him having found, to seize and apprehend, and to bring, together with his papers, in safe custody, before us, the committee aforesaid, at the city of Philadelphia, to be examined touching the premises. And all officers, civil and military, and all faithful citizens of the United States are required to be aiding and assisting to you, as there shall be occasion.

Given under our hands and seals, in committee aforesaid, at Philadelphia, the ninth day of July, in the year aforesaid.

S. SITGREAVES.  
 ABR. BALDWIN.  
 SAML. W. DANA.  
 J. DAWSON.  
 ROBT. G. HARPER.

UNITED STATES, to Wit:

*To Major Thomas Lewis.*

Whereas the House of Representatives of the United States did, on the eighth day of July, in the year of our Lord, one thousand seven hundred and ninety-seven, resolve as follows, to wit:

“*Resolved*, That a committee be appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House of high crimes and misdemeanors, and that the said committee have power to send for persons, papers, and records.

“*Ordered*, That Mr. Sitgreaves, Mr. Baldwin, Mr. Dana, Mr. Dawson, and Mr. Harper be a committee pursuant to the said resolution.”

And whereas the House of Representatives of the United States did, on the tenth day of July, in the same year, resolve as follows, viz:

“*Resolved*, That the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, impeached by this House of high crimes and misdemeanors, be authorized to sit during the recess of Congress.

“*Resolved*, That the said committee be instructed to inquire, and, by all lawful means, to discover the whole nature and extent of the offense whereof the said William Blount stands impeached, and who are the parties and associates therein.”

<sup>1</sup> Fifth Congress, Annals, p. 2324.

*“Ordered, That Mr. Dana be excused from serving on the committee appointed to prepare and report articles of impeachment against William Blount, a Senator of the United States, and that Mr. Bayard be of the said committee in his Stead.”*

You are hereby authorized and required, in pursuance of the said authority vested in us as aforesaid, taking to your assistance such person or persons as you may deem necessary to make strict and diligent search for Maj. James Grant, now or late of the State of Tennessee, and him having found, to seize and apprehend, and to bring, together with his papers, in safe custody, forthwith before us, the committee aforesaid, at the city of Philadelphia, to be examined touching the premises. And all officers, civil and military, and all faithful citizens of the United States, are required to be aiding and assisting to you as there shall be occasion.

Given under our hands and seals, in committee aforesaid, at Philadelphia, the tenth day of July in the year aforesaid.

S. SITGREAVES.

ABR. BALDWIN.

J. DAWSON.

R. G. HARPER.

J. A. BAYARD.

The chairman of the managers also in connection with the first process, issued instructions as follows:

*To Capt. William Eaton.*

SIR: You will proceed with the utmost expedition to New York, and, immediately on your arrival, see Mr. Harrison, or such other person as, in case of his absence, you are addressed to. Having advised with such person as to the proper mode of executing your commission, you will proceed, with such assistance as may be deemed necessary, to arrest the person expressed in your warrant, in the most secret manner, and to secure all his papers. Him and his papers you will then convey safely and expeditiously to this place.

When you see the person to be arrested, it will be proper to inform him that the committee is desirous of avoiding all unnecessary publicity, and that, by attending quietly with his papers, it may be prevented. You may let him understand at the same time that hesitation or resistance can have no other effect than to render the affair more disagreeable to him by making it public. On the road he will be treated by you as a fellow-passenger, but carefully attended to, and, above all, the papers are to be most carefully guarded and kept in your own possession.

The same treatment may be observed toward any other person whom, with his papers, it may be resolved to arrest.

Whatever papers are seized you will immediately seal up in the presence of the person to whom they belong, if on the spot, or, if not, in the presence of some other person, and will deliver them sealed to the committee.

It is scarcely necessary to add that the papers most likely to be important will be letters from William Blount, and copies of letters sent to him. Such must be diligently sought and carefully secured.

I am, Sir, your most obedient servant,

S. SITGREAVES, *Chairman of the Committee.*

PHILADELPHIA, *July 9, 1797.*

**2040. Form of discharge issued to a witness before the House committee which investigated the impeachment charges against William Blount.**—In the proceedings for the impeachment of William Blount, in 1797–8, the managers of the House of Representatives issued a discharge to a witness in form as follows:<sup>2</sup>

These are to certify whom it may concern, that Dr. Nicholas Romaine, of the city of New York, having attended the committee of the House of Representatives of the United States, charged with the impeachment of William Blount, in pursuance of the process by them issued for that purpose, and having undergone such examination, and answered such interrogatories as were required and exhibited by the said committee; and having further entered into bonds for his appearance before the Senate of the

<sup>2</sup>Fifth Congress, Annals, p. 2328.



United States as a witness on a trial of the said impeachment, has been, and hereby is, discharged by the said committee from any further attendance upon them.

Given in the committee aforesaid at the city of Philadelphia, on the twenty-second day of July, in the year of our Lord, one thousand seven hundred and ninety-seven.

By order of the committee.

S. SITGREAVES, *Chairman*.

**2041. Form of subscription of witness to testimony and attestation thereof in examination preliminary to the Peck trial.**—The Journal<sup>1</sup> of the Judiciary Committee, which in 1830 examined the charges against James H. Peck, judge of the United States court for the district of Missouri, shows that each witness subscribed to his testimony, which bore this further endorsement:

Sworn and subscribed before the Judiciary Committee on the—March, 1830.

Attest:

JAMES BUCHANAN, *Chairman*.

The same form is found in later investigations.

**2042. The House having attended when respondent's answer was read, it was held that the answer might not as of right be read again in the House during consideration of the replication.**

**The House may take official cognizance of a paper listened to by the Committee of the Whole in attendance on an impeachment trial.**

On March 23, 1868,<sup>2</sup> the House was considering the proposed replication to the answer of President Johnson to the articles of impeachment presented against him in the Senate by the House. This answer had been transmitted to the House from the Senate by message.

Mr. John W. Chanler, of New York, rising to a parliamentary inquiry, asked if the answer of the President might be read.

The Speaker<sup>3</sup> said:

The Chair rules that the message from the Senate can be read, but the answer of the President can not be read upon the demand of any Member. \* \* \* When the answer was read in the Senate, the House, in accordance with its own resolution, was in attendance there for the specific purpose of hearing the proceedings. It is therefore to be presumed that every Member of the House was present and heard the answer read.

Mr. Chanler having called attention to the fact that the House attended in Committee of the Whole, the Speaker said:

The Chair overrules the point made by the gentleman on the grounds that the House takes official cognizance of all proceedings in the Committee of the Whole as well as in the House; whether the Speaker or the chairman of the Committee of the Whole presides does not affect the question.

**2043. During the Johnson trial the House considered matters pertinent thereto under suspension of the rules.**—On March 16, 1868,<sup>4</sup> while proceedings for the impeachment of President Johnson were going on, the House, by suspension of the rules, considered and agreed to the following:

*Resolved*, That except during the morning hour on Monday the rules may be suspended during the pendency of the impeachment of the President to proceed to the consideration of any matter which may be reported by the managers on the part of the House of Representatives.

<sup>1</sup> First session Twenty-first Congress, House Report, No. 325.

<sup>2</sup> Second session Fortieth Congress, Globe, pp. 2073, 2079, 2080.

<sup>3</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>4</sup> Second session Fortieth Congress, Journal, pp. 530–532; Globe, pp. 1905, 1906.

**2044. Instance wherein the managers consulted the House as to a proposition that an impeachment trial be postponed.**

**The House having taken no action when consulted as to postponement of an impeachment trial, the managers left the decision to the court.**

**Instance wherein the managers of an impeachment made a verbal report to the House on a matter arising during the trial.**

On June 17, 1876,<sup>1</sup> in the Senate sitting for the impeachment trial of William W. Belknap, late Secretary of War, Mr. Jeremiah S. Black, of counsel for the respondent, moved "that this cause be now continued until some convenient day in the month of November."

Mr. Manager Scott Lord said:

Mr. President and Senators, under circumstances which I need not now here detail, surrounding this case, the managers have concluded to ask leave on this motion to consult with the House. I will say now that whatever the conference with the House may result in and whatever the determination of the Senate may be we desire that the question of filing this paper shall be disposed of when there is a quorum; but on the question of postponement under all the circumstances in which we find ourselves placed and the case placed we desire leave to confer with the House.

The Senate evidently in order to permit this consultation at once adjourned.

On the same day<sup>2</sup> Mr. Manager Lord made a verbal report to the House of Representatives, and then, on behalf of the managers, proposed this resolution:

Whereas in the impeachment of William W. Belknap the defendant has moved for a continuance now on account of the lateness of the session, with the difficulty which will probably attend the retaining of a full organization of the court and the urgency of other business.

*Resolved*, That the managers be authorized to consent to a continuance until the — day of November next.

Considerable debate arose over this proposition, there being a manifest feeling that the Senate should assume the responsibility of the decision. Mr. Manager Lord, in response to an inquiry by Mr. Fernando Wood, of New York, said that undoubtedly the Senate, like any other court, had the absolute right to postpone the trial without the assent of the managers for the House, and Mr. Samuel J. Randall, of Pennsylvania, thereupon urged that as they had that power they should exercise it.

Mr. John H. Reagan, of Texas, proposed the following substitute for the proposition of the managers:

*Resolved*, That upon the information communicated by the managers with reference to the impeachment of W. W. Belknap, the House of Representatives, with renewed assurances of confidence in the managers to whom the conduct of the trial has been committed, authorize them to act upon the subject of their communication as to them shall under all the circumstances of the case seem proper.

A motion for the previous question showed an equal division of the House, the Speaker pro tempore casting the deciding vote on a vote by tellers. A disposition to resort to dilatory proceedings being manifested the House dropped the matter and proceeded to other business.

On the next day, in the Senate sitting for the trial, Mr. Manager Lord said:

Mr. President, in regard to the application of the defendant to adjourn the trial to November next, the managers have reported to the House the proceedings in the court of impeachment on Saturday last; the House has taken no action in the premises, and the managers therefore leave the question of such postponement with the court.

The Senate denied the application for a postponement.

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<sup>1</sup>First session Forty-fourth Congress, Senate Journal, p. 953; Record of Trial, pp. 171, 172.

<sup>2</sup>House Journal, pp. 1116, 1117; Record, pp. 3871–3874.

**2045. A proposition to impeach a civil officer of the United States is presented as a question of constitutional privilege.**—On January 10, 1843,<sup>1</sup> Mr. John M. Botts, of Virginia, as a privileged subject, submitted the following:

I do impeach John Tyler, Vice-President, acting as President of the United States, of the following high crimes and misdemeanors:

First. I charge him with gross usurpation of power and violation of law in attempting to exercise a controlling influence over the accounting officers of the Treasury Department by ordering the payment of accounts of long standing that had been rejected for want of legal authority to pay, etc.

[The arraignment continues at considerable length, there being nine charges in all.]

Mr. Horace Everett, of Vermont, submitted that the proposition of Mr. Botts did not take precedence on the ground of privilege, and therefore was not in order according to the routine of business as established by the rule.

The Speaker<sup>2</sup> decided that as by the Constitution it was a privilege of the House of Representatives to institute proceedings against the President, he considered that the present was a privileged proceeding and should take precedence of all other proceedings.

The record of debates gives the Speaker's explanation for his ruling. He said that since the present Speaker had been in the chair there had been no case of this kind before the House, and only two cases since the beginning of the Government. The first was that of Chief Justice Chase,<sup>3</sup> in which no question like the one now raised was presented. That case was then considered and acted upon by the House as a privileged question. Mr. Randolph rose in his seat, and, without any resolution or specific charges, after some remarks on the conduct of Judge Chase, moved for a committee to take into consideration the propriety of impeaching him. The matter went on day after day, and by the universal acquiescence of the House took preference of all other business as a privileged question. In addition to this the Chair considered this a high constitutional question, paramount to all others, without reference to the rules of the House.<sup>4</sup>

**2046.** On January 7, 1867,<sup>1</sup> Mr. James M. Ashley, of Ohio, as a question of privilege, submitted the following:

I do impeach Andrew Johnson, Vice-President and Acting President of the United States, of high crimes and misdemeanors.

I charge him with a usurpation of power and violation of law—

In that he has corruptly used the appointing power;

In that he has corruptly used the pardoning power;

In that he has corruptly used the veto power;

In that he has corruptly disposed of public property of the United States;

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<sup>1</sup> Third session Twenty-seventh Congress, Journal, p. 159; Globe, p. 145.

<sup>2</sup> John White, of Kentucky, Speaker.

<sup>3</sup> See section 2342 of this volume.

<sup>4</sup> The Constitution provides: "The House of Representatives shall have the sole power of impeachment." (Art. I, section 2.)

"The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors." (Art. II, section 4.)

Second session, Thirty-ninth Congress, Journal, p. 121; Globe, p. 320.

In that he has corruptly interfered in elections, and committed acts which, in contemplation of the Constitution, are high crimes and misdemeanors: Therefore,

*Be it resolved*, That the Committee on the Judiciary be, and they are hereby, authorized to inquire into the official conduct of Andrew Johnson, Vice-President of the United States, discharging the powers and duties of the office of President of the United States, and to report to the House whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any Department or officer thereof; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdemeanors, requiring the interposition of the constitutional powers of this House; and that said committee have power to send for persons and papers and to administer the customary oaths to witnesses.

Mr. William E. Finck, of Ohio, made a point of order, questioning whether the matter was privileged.

The Speaker<sup>1</sup> ruled that it was privileged, saying that in the Twenty-seventh Congress, by the then Speaker, it was decided, on the point raised by Horace Everett, of Vermont, that it was a question of privilege.<sup>2</sup>

**2047.** On December 2, 1884,<sup>3</sup> Mr. John F. Follett, of Ohio, submitted as a matter of privilege the following:

I do impeach Lot Wright, United States marshal of the southern district of Ohio, of high crimes and misdemeanors.

I charge him with usurpation of power and violation of law—

In that he appointed a large number of general and special deputy marshals to serve at the several voting precincts in the city of Cincinnati, in the State of Ohio, at an election for Members of Congress held in said city on the 14th day of October, A. D. 1884, and armed said deputy marshals with pistols and other deadly weapons, said to have been furnished by the War Department of the United States Government, etc., \* \* \* Therefore,

*Resolved*, That the Committee on Expenditures in the Department of Justice be required and directed, as soon as the same can reasonably be done, to investigate such charges and report to this House—

First. How many deputy marshals, general and special, were appointed and authorized by said United States marshal for the southern district of Ohio, etc. \* \* \*

*Resolved*, That in making such investigation the said committee be empowered to appoint a subcommittee of three, consisting of the chairman of said committee and such other two members thereof as he may select, which subcommittee shall have full power to meet and hold its sessions at such times and places as may seem proper, to send for persons and papers, to compel the attendance of witnesses and to require them to testify, to employ a stenographer, and to incur any and all such necessary and reasonable expenditures as may be deemed requisite for the purposes of such investigation, such expenditures to be paid out of the contingent fund of the House.

Mr. J. Warren Keifer, of Ohio, made the point of order that the resolutions were not in order.

After debate the Speaker<sup>4</sup> said:

The present occupant of the chair decided during the last session of Congress that a mere proposition to investigate the conduct of a public officer, without proposing to impeach him, was not a matter of privilege under the rules of the House or under the Constitution of the United States; and the Chair has seen no reason to change that opinion. But the gentleman from Ohio (Mr. Keifer) is mistaken in his statement that the resolution now offered does not contain a proposition for impeachment. The

<sup>1</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>2</sup> Other resolutions were presented on the same subject, but not as questions of privilege. Journal, second session Thirty-ninth Congress, pp. 118, 119.

<sup>3</sup> Second session Forty-eighth Congress, Journal, pp. 27, 28; Record, pp. 17–19.

<sup>4</sup> John G. Carlisle, of Kentucky, Speaker.

resolution begins with an impeachment of this officer; and all that follows is a mere specification under the general charge made, together with a direction to a committee to make the investigation usual in such cases. The proceeding corresponds precisely with that adopted in the Twenty-seventh Congress, when an attempt was made to impeach the then President, John Tyler, and adopted afterwards in the Thirty-ninth Congress, when Mr. Ashley, then a Member from Ohio, rose in his place on the floor, made charges against the then President, Andrew Johnson, and asked for an investigation. \* \* \* It is admitted that the resolution now offered does contain a proposition to impeach a public officer who is impeachable under the Constitution; but it is insisted that it does not present a matter of privilege under the Constitution or rules of the House, because, in the first place, it contains other matter; that is to say, it directs the committee to take certain evidence in the case which it is claimed is not pertinent to the charges made.

It may be, or it may not be, that the resolution does direct the committee to take what the House might afterwards decide to be incompetent evidence upon a charge of this character. But that, of course, is not a question for the Chair to determine. It is the province of the House to decide, when the resolution comes before it, how far it shall direct the committee to proceed in the investigation or as to what charges it shall investigate.

Again, it is objected that this inquiry should be made by the Committee on the Judiciary, and not by the Committee on Expenditures in the Department of Justice. Of course, if a proposition to impeach a public officer should be submitted to the Chair for reference, the Chair, under the rules of the House, would send it to the Committee on the Judiciary; but it is always in the power of the House itself to determine what committee shall conduct an investigation or consider and report upon any matter. So it seems to the Chair that under all of the rulings heretofore made this presents a matter of privilege, and the House can determine for itself how far the committee shall proceed in the investigation, what committee shall have charge of it, and what matters shall be investigated.

**2048.** On December 10, 1895,<sup>1</sup> Mr. William E. Barrett, of Massachusetts, presented as a question of privilege the following:

I do impeach Thomas F. Bayard, United States ambassador to Great Britain, of high crimes and misdemeanors on the following grounds:

Whereas the following report of a speech, delivered before the Edinburgh Philosophic Institution, by Hon. Thomas F. Bayard, ambassador of the United States of America at the Court of Great Britain, is published in the London News under date of November 8, 1895:

"The opening address of the Edinburgh Philosophic Institution was delivered last night by Mr. Bayard, ambassador of the United States of America, who selected for the subject 'Individual freedom the germ of national progress and permanence.' In his own country, he said, he had witnessed the insatiable growth of that form of State socialism styled 'protection' which he believed had done more to foster class legislation and create inequality of fortune, to corrupt public life, to banish men of independent mind and character from the public councils, to lower the tone of national representation, blunt public conscience, create false standards in the popular mind, to familiarize it with reliance upon State aid and guardianship in private affairs, divorce ethics from politics, and place politics upon the low level of a mercenary scramble than any other single cause," etc. [The extract is quoted at length.]

And whereas such reflections on the Government's policy and people of the United States by an ambassador of the United States to a foreign country and before a foreign audience is manifestly in serious disregard of the proprieties and obligations which should be observed by an official representative of the United States abroad, and calculated to injure our national reputation.

*Be it resolved by the House of Representatives,* That the Committee on Foreign Relations be directed to ascertain whether such statements have been publicly made; and, if so, to report to the House such action, by impeachment or otherwise, as shall be proper in the premises. For the purpose of this inquiry the committee is authorized to send for persons and papers.

Mr. Charles F. Crisp, of Georgia, made the point of order that this did not constitute a question of privilege.

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<sup>1</sup>First session Fifty-fourth Congress, Journal, p. 37; Record, p. 115.

During the debate the precedents of February 4 and December 2, 1884,<sup>1</sup> were cited. The Speaker,<sup>2</sup> in ruling, said:

It seems to the Chair that there is a great distinction between the two cases. The Chair has examined the decision of the Speaker of the House made on the 2d day of December, 1884, and sees no reason why he should not adopt that opinion. The Chair therefore overrules the point of order.<sup>3</sup>

**2049. Although a report as to an impeachment be laid on the table, the right to move again an impeachment in the same case is not precluded.**—On December 6, 1867,<sup>4</sup> the House was considering the report of the Judiciary Committee recommending the impeachment of Andrew Johnson.

Mr. John F. Farnsworth, of Illinois, rising to a parliamentary inquiry, asked whether, if the subject be laid on the table, it would prevent any gentleman from calling it up as a question of privilege and moving the impeachment of the President.

The Speaker<sup>5</sup> said:

If this subject be laid on the table, no gentleman can call up this report. He can propose to impeach the President or any other officer of the Government on any day during the session, and that could be done even though the President should have been impeached and acquitted by the Senate.

**2050. A mere proposition to investigate the conduct of a civil officer is not presented as a matter of constitutional privilege, even though impeachment may be contemplated as a possibility.**—On February 4, 1884,<sup>6</sup> Mr. William M. Springer, of Illinois, presented the following resolution, claiming it to be a question of privilege:

*Resolved*, That the petition of Richard W. Webb, and accompanying statement of charges against Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district thereof, be referred to the Committee on the Judiciary and printed, and that the Committee on the Judiciary be directed to inquire and ascertain whether the allegations \* \* \* be true, \* \* \* and report thereon to the House such action, to be taken by impeachment or otherwise, as they may advise; and in making such examination and investigation the said committee have power to send for persons and papers.

Mr. John A. Kasson, of Iowa, made the point that this was not such a question as enabled the memorial to have present consideration. If it were entitled to consideration, one person who might or might not be responsible might spread before the country charges which had not been examined by any committee.

In sustaining the point of order the Speaker<sup>7</sup> said:

The Chair will state that, having looked at the memorial, he finds that it does contain charges against a judge of the United States court in the Territory of New Mexico. Upon that the gentleman from Illinois offers a resolution that the memorial and charges be referred to the Committee on the Judiciary for investigation. The question is made that this is not a matter of privilege. \* \* \* If a Member on the floor should prefer articles of impeachment against a public officer the Chair has no

<sup>1</sup> See sections 146 and 148.

<sup>2</sup> Thomas B. Reed, of Maine, Speaker.

<sup>3</sup> For a similar instance wherein Mr. Speaker Colfax held that a proposition to impeach Charles Francis Adams, minister to England, was privileged, see *Globe*, first session Fortieth Congress, pp. 778, 779.

<sup>4</sup> Second session Fortieth Congress, *Globe*, p. 65.

<sup>5</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>6</sup> First session Forty-eighth Congress, *Journal*, p. 495; *Record*, p. 871.

<sup>7</sup> John G. Carlisle, of Kentucky, Speaker.

doubt that it would be a privileged matter under the Constitution, because the House possesses the power of impeachment. But this is not a resolution proposing to impeach anyone. It simply instructs the Committee on the Judiciary to inquire into the truth or falsity of certain charges made against a public officer in a memorial which has been presented. The inquiry may result in an impeachment or it may not.

**2051. A resolution directly proposing impeachment is privileged; but the same is not true of one proposing investigation with a view to impeachment.**—On December 2, 1867,<sup>1</sup> Mr. William E. Robinson, of New York, claiming the floor for a question of privilege, offered the following resolution:

*Resolved*, That the Committee on Foreign Affairs be instructed to inquire into the conduct of William B. West, American consul at Dublin, in Ireland, regrading American prisoners in that city and to report thereon forthwith, to the end that if he has been guilty of conduct which would be liable to impeachment this House may take measures to have articles of impeachment presented to the Senate.

Mr. John F. Farnsworth, of Illinois, made the point of order that this did not involve a question of privilege.

The Speaker<sup>2</sup> said:

The gentleman from Illinois rises to a question of order, that as the resolution does not positively propose impeachment of this consul it is not a question of privilege. The Chair sustains the point of order.

Thereupon Mr. Robinson modified his resolution to read as follows:

*Resolved*, That William B. West, consul of the United States at Dublin, Ireland, be impeached before the Senate.

The Speaker said:

That is a question of privilege, and can be introduced for reference or action.

The resolution was referred to the Committee on Foreign Affairs.

**2052.** On November 21, 1867,<sup>1</sup> Mr. William E. Robinson, of New York, as a question of privilege, submitted the following resolution:

Whereas Charles Francis Adams, United States minister to Great Britain, has been charged with neglect of duty toward American citizens in England and Ireland by failing to secure their rights as such citizens: Therefore,

*Be it resolved*, That the Committee on Foreign Affairs be instructed to inquire into the foregoing charge and to report thereon forthwith, to the end that, if the charge be true, articles of impeachment against said Charles Francis Adams may be presented by this House to the Senate of the United States; that the President of the United States be requested to telegraph to the said Charles Francis Adams immediately to demand his passports and to return home; that the Secretary of State be instructed to communicate to this House all correspondence to and from the Department for the two years last past on the arrest, imprisonment, trial, or conviction of any American citizen, or any person claiming to be such, in Great Britain and Ireland, without reference to its public effect, to be considered, if need be, in secret session of this House.

The resolution having been read, the Speaker<sup>4</sup> said:

The Chair rules that this resolution is a question of privilege, as it proposes an impeachment of an officer of the Government.

<sup>1</sup> Second session Fortieth Congress, Journal, p. 9; Globe, p. 4.

<sup>2</sup> Schuyler Colfax, of Indiana, Speaker.

<sup>3</sup> First session Fortieth Congress, Journal, p. 256; Globe, p. 778.

<sup>4</sup> Schuyler Colfax, of Indiana, Speaker.

**2053. Impeachment is a question of constitutional privilege which may be presented at any time irrespective of previous action of the House.**—On March 3, 1879,<sup>1</sup> the regular order of business was the report of the Committee on Expenditures in the State Department proposing articles of impeachment against George F. Seward, late consul-general at Shanghai, China, and now minister plenipotentiary to China.

Mr. Omar D. Conger, of Michigan, made the point of order that the House having referred the subject-matter of the investigation of charges against Mr. Seward to the Committee on the Judiciary it was not in order for the Committee on Expenditures in the State Department to take further action on the case.

The Speaker<sup>2</sup> overruled the point of order on the ground that the subject referred to the Committee on the Judiciary was the answer of the said Seward in response to the order of the House requiring him to show cause why he should not be declared in contempt of the House, and also on the further ground that the question of impeachment was one of constitutional privilege which could be raised or presented at any time by any Member of the House.

**2054. A resolution for discontinuing impeachment proceedings, but not respectful to the House, was ruled not to be privileged.**—On May 18, 1868<sup>3</sup> Mr. Alexander H. Jones, of North Carolina, offered as involving a question of privilege, the following:

Whereas this House did in bad judgment and hot haste pass a resolution and articles of impeachment against Andrew Johnson, President of the United States, and appointed managers to conduct the suit before the high court of the Senate; and whereas it has been abundantly proven that there was no cause or plausible pretext for the same; and whereas the Senate and the country labor under great excitement and embarrassment: Therefore,

*Be it resolved*, That said managers be instructed forthwith to withdraw said suit, that the House may be redeemed, the Senate relieved, and the country given repose.

Mr. Elihu Washburne, of Illinois, having objected, the Speaker<sup>4</sup> held:

The Chair will rule on the question. He think this is not a question of privilege. The preamble contains a reflection on the House. It is unparliamentary on the part of any Member to reflect upon the action of the House in the language used in the preamble. \* \* \* It is not a parliamentary preamble and resolution for the consideration of the House, not being respectful in its terms to the House.

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<sup>1</sup>Third session Forty-fifth Congress, Journal, p. 621; Record, pp. 2347, 2348.

<sup>2</sup>Samuel J. Randall, of Pennsylvania, Speaker.

<sup>3</sup>Second session Fortieth Congress, Globe, p. 2259.

<sup>4</sup>Schuyler Colfax, of Indiana, Speaker.